

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 26, 2011

In the Matter of BROWN, Minors.

No. 301014
Wayne Circuit Court
Family Division
LC No. 07-473794

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Respondent K. Brown appeals as of right from an order that terminated her parental rights to her two minor sons, A.K.A. Brown and A.M.D. Brown, pursuant to MCL 712A.19b(3)(c)(i),¹ (g),² and (j).³ We affirm.

I. FACTS

¹ MCL 712A.19b(3)(c)(i) states that “[t]he court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence,” that

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . [that] [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

² MCL 712A.19b(3)(g) states that “[t]he court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence,” that “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

³ MCL 712A.19b(3)(j) states that “[t]he court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence,” that “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.”

In October 2007, the Department of Human Services (DHS) filed a petition seeking temporary custody of A.K.A. Brown. The petition alleged that the identity of A.K.A. Brown's father could not be determined. K. Brown had two older children, neither of whom were in her care; both were in guardianships with relatives.

According to the petition and witness testimony, on August 25, 2007, police officers found K. Brown and four-month-old A.K.A. Brown in the middle of the night on a street near Seven Mile in Detroit. K. Brown fled as the officers approached, and the officer had to run to catch up with her. K. Brown was crying, disoriented, and hysterical. She smelled of intoxicants. When officers tried to talk to her, she "uttered some words she didn't want the baby, take the baby." Other than providing her name, K. Brown could not provide basic information, such as where she lived (other than with her father), her father's name, or the baby's name. The officers took K. Brown and A.K.A. Brown to Detroit Receiving Hospital and contacted Children's Protective Services (CPS). CPS then authorized the officers to release A.K.A. Brown to relatives. K. Brown had an extensive CPS history, including testing positive for cocaine and alcohol during her pregnancies. In addition to her substance abuse problems, it was reported that K. Brown was bipolar and failed to take her medication as prescribed.

After an adjudication hearing in March 2008, the trial court adjudicated A.K.A. Brown to come within the jurisdiction of the court. The matter then proceeded to disposition in April 2008. John Joubert, case manager with Ennis Center for Children, testified that he had prepared a parent-agency agreement that required K. Brown to attend outpatient treatment for substance abuse, obtain suitable housing, obtain employment, attend parenting classes, and attend individual counseling. According to Joubert, K. Brown was already complying with the counseling and outpatient treatment aspects of the parent-agency agreement. At that time, K. Brown was living with a friend, she was taking advantage of her one-hour weekly visitation with A.K.A. Brown, and the visits were appropriate. In addition to the services provided for in the parent-agency agreement, the referee ordered that K. Brown undergo a psychiatric evaluation and a Clinic for Child Study.

At a July 2008 dispositional review hearing, it was reported that K. Brown was pregnant again. At that time, she was homeless and without a source of income. Further, K. Brown had missed five of 13 scheduled visits with A.K.A. Brown because of transportation problems. Although she had completed her Clinic for Child Study program, she had not submitted any random drug screens. It was recommended that she attend an inpatient substance abuse program. During a break in the hearing, K. Brown agreed to submit to a drug screen, which was positive for cocaine and marijuana. The referee ordered that K. Brown attend an inpatient drug facility where she would also receive prenatal care.

At an August 2008 dispositional review hearing, Joubert reported that K. Brown failed to complete the inpatient treatment program, having stayed for only 12 days. While at the center, K. Brown refused a drug screen and breathalyzer. A bottle of alcohol was discovered in her room after she left. K. Brown had since attended only four of seven scheduled visits with A.K.A. Brown. She completed only two of 14 parenting classes and was still without housing or income. Although DHS requested that the matter proceed to termination, the referee noted that A.K.A. Brown had been in care for only nine months and a custody petition would be premature. A concurrent alternate permanent plan was created.

A permanency planning hearing was held in November 2008. Beverly Purnell of Ennis Center for Children reported that K. Brown was enrolled in an inpatient treatment program, where she was participating in parenting classes, group and individual therapy, and random drug screens. Although K. Brown had a relapse in October 2008 for alcohol, she was given a second chance to comply with her treatment plan. The referee ordered that A.K.A. Brown remain a temporary ward and that DHS file a petition when K. Brown's new baby was born. The referee declined to order that a permanent custody petition be filed. "However, the Court is putting in the order that if the mother has another relapse or if she leaves the substance abuse program prior to completion that the department is to immediately file a petition to terminate parental rights."

A.M.D. Brown was born in December 2008, and paternity was not ascertainable. A preliminary hearing was held shortly after his birth. K. Brown was still residing in an inpatient treatment center. However, K. Brown tested positive for cocaine when A.M.D. Brown was born. Accordingly, the trial court authorized a petition.

An adjudication hearing regarding A.M.D. Brown was held in January 2009. K. Brown testified that she had completed her 90-day inpatient treatment program and was attending outpatient treatment. She admitted that A.K.A. Brown was already a temporary ward and her two other older children were in legal guardianships. K. Brown denied testing positive for cocaine when A.M.D. Brown was born. K. Brown's drug of choice was alcohol. The trial court adjudicated A.M.D. Brown to come within the jurisdiction of the court.

The matter proceeded to disposition in February 2009. K. Brown was attending therapy, and her therapist believed that K. Brown was "on the right path." However, Deborah McKinney from Ennis Center for Children testified that K. Brown had terminated herself from inpatient treatment in January 2009 and that she was not complying with random drug screens. The referee adopted a parent-agency agreement for A.M.D. Brown and also ordered that a termination petition be filed.

At an April 2010 review hearing, McKinney reported that K. Brown had obtained suitable housing and was receiving supplemental security income (for her bipolar condition) and food stamps. K. Brown was compliant with outpatient substance abuse counseling. She was attending parenting classes and was compliant with her mental health medication. K. Brown had two relapses for crack and alcohol in December 2009 and March 2010. K. Brown visited with the children one hour a week. The referee ordered that a termination petition be filed if K. Brown tested positive again or missed any screens. Otherwise, the matter was continued for three months for another review hearing.

The termination hearing took place in September 2010. K. Brown, who was then living in Georgia, appeared via speakerphone. K. Brown could not give the court the address for where she was staying; she had only been there for four days. Derrick Forbers testified that he was a social worker at Ennis Center for Children and had the case since August 2010. According to Forbers, K. Brown's last drug screen was in June 2010. K. Brown never successfully completed any of the five different substance abuse programs she attended. Although K. Brown completed a psychological evaluation, a psychiatric evaluation, and a Clinic for Child Study, she failed to successfully complete parenting classes. K. Brown attended individual counseling, but was eventually terminated. K. Brown did not consistently visit with the children; her last visit with them was in August 2010. K. Brown told Forbers that she went to Georgia "to get her life

straightened out” and that she thought it would take two years to do so. Forbers had the impression that K. Brown expected to work on her problems in Georgia and then return to Michigan for her children.

The referee recommended termination of K. Brown’s parental rights, making her findings of fact and conclusions of law on the record. The trial court adopted the referee’s findings and conclusions, and ordered the termination of K. Brown’s parental rights to A.K.A. Brown and A.M.D. Brown, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). K. Brown now appeals as of right.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.⁴ We review for clear error a trial court’s decision terminating parental rights.⁵ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁶ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁷

B. ANALYSIS

As noted above, in August 2007, police officers found K. Brown wandering with four-month-old A.K.A. Brown in the middle of the night. K. Brown was disoriented and hysterical and could not provide the officers with basic information. K. Brown had a history of substance abuse and mental health issues. She also had a history of CPS involvement, and her two oldest children had already been placed in legal guardianships. At the first review hearing in July 2008, K. Brown was already four months pregnant again and tested positive for marijuana and cocaine. Indeed, K. Brown tested positive for cocaine when A.M.D. Brown was born.

In recommending termination of K. Brown’s parental rights, the referee noted that K. Brown had “not completed the most important parts of the treatment plan that address substance abuse and mental health issues.” Such a finding was supported by the record. K. Brown was never successfully discharged from any of the many substance abuse programs she tried. She suffered relapses in October 2008, December 2009, and March 2010. There was simply no

⁴ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁵ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

⁶ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁷ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

evidence that K. Brown had adequately addressed her substance abuse problem at the time of the termination hearing, which occurred almost two years after the older minor child came into care.

In addition, K. Brown had bipolar disorder and admitted she did not consistently take her medications. She submitted to evaluations and attended individual therapy but was eventually dismissed for failure to participate. Thus, K. Brown's issues with her mental health also remained unresolved.

K. Brown may have made progress when she secured adequate housing and was receiving supplemental security income and food stamps. However, this progress was negated when K. Brown left the state without any warning or notice to the caseworkers or the court. She had only been in Georgia for four days when she appeared at the termination hearing by speakerphone. K. Brown was under the impression that she could work on her troubles in Georgia and then return for the children when she got her life in order—which, by K. Brown's estimation, would be in approximately two years.

Given the foregoing evidence, it was clear that the conditions leading to the adjudications continued to exist and there was no reasonable likelihood that the conditions would have been rectified within a reasonable time. K. Brown was unable to provide the children with proper care and custody. Additionally, because of K. Brown's unaddressed substance abuse and mental health issues, the children would have likely been harmed if returned to her care. Accordingly, we conclude that the trial court did not clearly err in finding that there was clear and convincing evidence to support termination of K. Brown's parental rights.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.⁸ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.⁹ We review the trial court's decision regarding the child's best interests for clear error.¹⁰

B. ANALYSIS

With regard to the children's best interests, the children needed permanence and could not wait another two years while their mother attempted to "to get her life straightened out."

⁸ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

⁹ *In re Trejo Minors*, 462 Mich at 353.

¹⁰ *Id.* at 356-357.

A.K.A. Brown had been in the court's temporary custody since he was four months old and A.M.D. Brown had been in the court's temporary custody since just after his birth. K. Brown visited them inconsistently and left the state without any regard for the fact that she would not be able to see her children while she was away. The record did not support a finding that an appreciable bond existed between K. Brown and the children. Accordingly, we conclude that the trial court did not clearly err in finding that termination of K. Brown's parental rights was in the children's best interests.

We affirm.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly